



PATENT
Attorney Docket No. OPHD-08258

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of: Sean B. Carroll *et al.*
Serial No.: 10/662,918
Filed: 9/15/03
Entitled: **Clostridial Toxin Disease Therapy**
Group No.: 1644
Examiner: Kim, Yunsoo

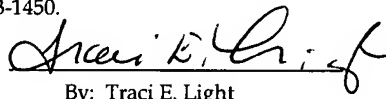
**REQUEST TO WITHDRAW FINALITY OF FINAL
OFFICE ACTION MAILED AUGUST 22, 2007**

Mail Stop - Amendment
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

CERTIFICATE OF MAILING UNDER 37 C.F.R. § 1.8(a)(1)(i)(A)

I hereby certify that this correspondence (along with any referred to as being attached or enclosed) is, on the date below, being deposited with the U.S. Postal Service with sufficient postage as first class mail in an envelope addressed to the Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

Dated: October 26, 2007


By: Traci E. Light

Examiner Kim:

The Applicants respectfully request that the Examiner consider withdrawing the pending Final Office Action as being prematurely issued. The Applicants have diligently pursued the prosecution in good faith and in accordance with USPTO guidelines:

The applicant who is seeking to define his or her invention in claims that will give him or her the patent protection to which he or she is justly entitled should receive the cooperation of the examiner to that end, and not be prematurely cut off ...

MPEP §706.07 Final Rejection [emphasis added]. Further, the Applicants have not engaged in any behavior intended to unfairly prolong the examination:

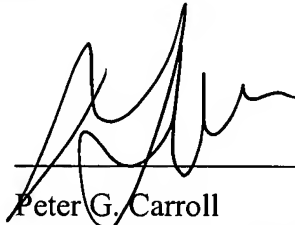
...the applicant who dallies in the prosecution of his or her application, resorting to technical or other obvious subterfuges in order to keep the application pending before the primary examiner, can no longer find a refuge in the rules to ward off a final rejection.

MPEP §706.07 Final Rejection. On the contrary, the Applicants responded to the last office action with a declaration. Thereafter, the Examiner withdrew the enablement rejection. In other words, progress is being made on this application. A Final Rejection at this point unfairly truncates the Applicants' entitlement to a full and fair hearing:

The examiner should never lose sight of the fact that in every case the applicant is entitled to a full and fair hearing ...

MPEP §706.07 Final Rejection. With respect to a "full and fair hearing," the Examiner made the naked assumption (without an opportunity for Applicants to be heard on the question) that "the claimed invention implicitly requires developing tolerance as well." Now, the Second Declaration of Dr. Stafford, citing both immunology publications as well as the words in the prior art, establishes that the Examiner's speculation is ill-founded. Consequently, the Applicants respectfully request that the Examiner consider withdrawing the present final office action and that the fee for the RCE be refunded.

Dated: October 26, 2007



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